

## **Proposed Work Plan for the Independent Commission on Judicial Reform**

### **I. Follow the guiding principles and objectives of Executive Order No. 6-09.**

In creating the Independent Commission on Judicial Reform and setting forth the scope and parameters of the Commission's responsibilities, the Governor articulated certain principles and objectives that should guide the Commission's work in the coming months. The Commission therefore recognizes its responsibility to structure its processes in a manner that promotes these principles and strives to achieve these objectives:

- (i) Bolstering public trust and confidence in the judiciary.
- (ii) Preserving the independence of the judiciary, as well as the sanctity of the separation of powers among the three separate and coequal branches of government.
- (iii) Encouraging an objective examination of West Virginia's court system that may result in the adoption of systemic reforms that will modernize and improve West Virginia's judiciary.

### **II. Scope of Review.**

Executive Order No. 6-09 directs the Commission to "study the need for broad systemic judicial reforms including, but not limited to, adopting a merit-based system of judicial selection, enacting judicial campaign finance reforms or reporting requirements, creating an intermediate court of appeals, proposing constitutional amendments or establishing a court of chancery."

Pursuant to the terms and conditions of the Executive Order, the Commission must submit a detailed report of its findings and recommendations to the Governor by **November 15, 2009**. Given this compressed time frame, it may prove unlikely that the Commission will delve

into areas other than those three broad issues explicitly identified in Executive Order No. 6-09, which colloquially may be referred as:

- (i) judicial selection;
- (ii) judicial campaign finance; and
- (iii) structural/organizational issues and the right to appeal.

### **III. Ensure Accountability to the Bench, the Bar, and the Public.**

To foster transparency and ensure the Commission's accountability to members of the judiciary, bar members, and all West Virginia citizens, it is imperative to encourage public access to the Commission's work. All Commission meetings will be conducted in public and notices of such meetings will be published in the State Register in accordance with the Open Governmental Proceedings Act, W. Va. § 6-9A-1, *et seq.* In addition, the Commission will undertake efforts to establish a website, which may then be utilized to provide notification of meetings, detailed agenda items, and access to information and materials submitted to and considered by the Commission in the course of its work.

### **IV. Information Gathering.**

As part of any study of this sort, it is critical that the Commission undertake a period of intensive information gathering and data collection. However, the looming November deadline will necessarily restrict the time – and to some extent, the methods – that the Commission may employ to gather relevant information and collect pertinent data. Thus, unlike the study conducted in the late 1990s by the Commission on the Future of the West Virginia Judicial System, this Commission simply does not have the time to schedule dozens of meetings, conduct several public hearings, or submit questionnaires to every petit juror in the state.

One advantage we do have, however, is the ability to draw heavily from the research and analysis contained in the excellent 1998 report prepared by the Commission on the Future of the West Virginia Judicial System, along with comparable studies that have been conducted (or are being conducted) by The West Virginia State Bar, the West Virginia Bar Association, academic commentators, and others.

Moreover, our compressed timeframe should not prevent this Commission from taking several thorough and meaningful steps to gather information relevant to our tasks, including the following:

***State Bar Survey.***

Obviously, members of the Bar need to be given ample opportunity to express their thoughts, comments, and suggestions regarding the Commission's work. In light of the potential time delays that would accompany the mailing, distribution, and anticipated return of written surveys, the Commission would circulate survey questionnaires to Bar members electronically, thereby permitting members to return the questionnaires more quickly and efficiently.

***Written Submissions.***

The Commission will invite and encourage the submission of written comments via the mail, the Commission's website, and during the scheduled public hearings. To this end, the Commission will explore posting advertisements in bar publications and around various court locations to invite such submissions.

***Review of Previous Studies.***

As noted, the work of this Commission will benefit from the detailed and thorough reports prepared by those groups that have undertaken comparable studies of the West Virginia judiciary over the past few years. By definition, these reports are the work product of their

respective studies and, as such, they reach their own conclusions and propose their own recommendations. Irrespective of such conclusions or recommendations, however, the research and data embodied in each will provide immeasurable assistance to the work of this Commission.

***Consultation with Judicial & Legislative Branches.***

Executive Order No. 6-09 encourages the Commission to consult with all members of the judiciary and the participation of representatives of the judicial branch is imperative to the success of the Commission's work. Much of the information relevant to this Commission's work may be obtained from the judiciary, including recent details about judicial workload, case management, court processes, and filing trends. Moreover, the Administrative Office of the Supreme Court of Appeals will be able to offer significant insight into the logistical concerns that might accompany some of the Commission's recommendations. For these and many other reasons, it is imperative that the judiciary be **invited** to offer their thoughts on the Commission's work throughout the process, including during each public hearing. Likewise, the West Virginia Judicial Association, a voluntary association of West Virginia state court judges, should be **invited** to share its collective thoughts on the issue before the Commission, including the opportunity for representatives of the Association to speak during the public hearings.

Similarly, the involvement of legislators will also prove critical to this process, especially insofar as the Commission's recommendations may ultimately require legislative approval. The Committee should reach out to the legislative members, including the President of the Senate, Speaker of the House of Delegates, the Chair of the West Virginia Senate Committee on the Judiciary and the Chair of the West Virginia House of Delegates Committee on the Judiciary, invite their comment, and urge them to attend and speak during the public hearings.

### ***Public Hearings.***

Public hearings will allow interested groups and citizens to express their suggestions, concerns and beliefs to the Commission. The Commission will hold three meetings in different cities throughout West Virginia. Each meeting will focus primarily on one of the three broad issues identified in the Executive Order. Although each meeting will have a primary focus (*i.e.*, judicial selection), the Commission will welcome public comment on any issue during each meeting.

The Commission will invite interested groups to attend these hearings, including the West Virginia State Bar, representatives of organized labor, the West Virginia Chamber of Commerce, and voluntary associations of judicial or legal professionals such as the American Bar Association, the West Virginia Association for Justice and the Defense Trial Counsel of West Virginia.

### ***Targeted date for end of data collection: October 1, 2009.***

It is the goal of the Commission to complete the information gathering, data collection and educational phase of its work process by October 1, 2009, thereby permitting the Commission to spend the final six weeks analyzing the information gathered, considering options, and reaching a consensus on potential recommendations.

## **V. Analysis & Study.**

The Commission will consider and analyze the information presented and gathered to create a concise and comprehensive report detailing its findings and recommendations regarding the three broad issues identified within the Executive Order. When developing its

recommendations, the Commission will strive to follow the guiding principles and objectives of the Executive Order.

**VI. Present Report.**

On or before November 15, 2009, the Commission will present its report to the Governor. The report will include recommendations regarding judicial selection; judicial campaign finance; and structural/organizational issues and the right to appeal. In accordance with the provisions of Executive Order No. 6-09, the Commission shall adjourn upon the completion of its report. To the extent that the Commission feels that further study of the judicial system is warranted, the report may contain a recommendation to the Governor that the Commission be reconvened.